IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 737 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

M KUMAR @ MOHANBHAI S TURI

Appearance:

1. Criminal Appeal No. 737 of 1995

MR SJ DAVE, APP for Petitioner No. 1

M/S THAKKAR ASSOC. for Respondent No. 1

NOTICE SERVED for Respondent No. 1

NANAVATY ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/02/2003

ORAL JUDGEMENT

This is an appeal under Section 378 of the Code

of Criminal Procedure, 1973 (for short, "the Code"), challenging the judgment and acquittal order dated 21/03/95 recorded by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 2780 of 1988 acquitting the present respondent for offences punishable under Section 420, 468 and 471 of IPC.

2. The case of the prosecution against the present respondent before the trial court was that the real birth date of the present respondent was 06/05/1940, but when he appeared before the Union Public Service Commission for attending IAS, IPS etc. examinations, he submitted a certificate showing that his birth date was 01/06/1948. It was, therefore, alleged against him that the respondent submitted false certificate, so as to show that he was born on 01/06/48. It was alleged against the respondent that the respondent produced the said forged document, knowing it to be a forged one. It was, further, alleged that thereby, he cheated the said Commission and ultimately the State and committed the aforesaid offences.

3. The aforesaid FIR underwent investigation and at the close of investigation, chargesheet was filed. The said case was registered as Criminal Case No. 2780 of 1988 before the learned Chief Metropolitan Magistrate, Ahmedabad.

4. The respondent was provided with police investigation papers. Charge was framed. The respondent pleaded not guilty to the said charge and therefore, evidence was recorded. At the close of the evidence, further statement of the respondent was recorded. After hearing the arguments, the learned Magistrate found that there was no evidence to show that the respondent had forged the said document and had produced the said forged document before the said Commission. It was, therefore, held by the trial court that it was not proved that the respondent had cheated the Commission or the State. Consequently, the trial court acquitted the present respondent from the aforesaid offences.

5. Feeling aggrieved by the said judgment and acquittal order of the trial court, the State has preferred this appeal before this Court. It has been contended that there was sufficient material before the trial court to show that the respondent had forged the said document, Ex. 13 and had used the said forged document for showing that his birth date was 01/06/48 that ultimately, there was evidence before the trial court that the respondent had cheated the said Commission

and the State. That, therefore, the trial court has committed error in acquitting the respondent that therefore, the present appeal be allowed, the judgment and acquittal order of the trial court be set aside and the respondent be convicted for the aforesaid offences.

6. On receiving the appeal, it was admitted. Now, it has come for final hearing.

7. At the final hearing today, Mr.S J Dave, learned APP appears for the State and on the other hand, the respondent was represented by Mr.N D Nanavaty, learned advocate for the respondent. The learned advocate for the parties have taken me through the judgment of the trial court.

8. The trial court has observed that so far the Certificate, Ex.13 is concerned, it is not proved on record that the said certificate was forged by the present respondent. It has also been observed by the trial court that the State has not examined handwriting experts, as a witness, in order to prove that the said document, Ex.13 was forged by the present respondent. It has also been observed by the trial court that there is no other evidence to show that the handwriting on document, Ex.13, was the handwriting of the present respondent. In short, the trial court has held that the said document, Ex.13, is not proved to have been forged by the present respondent.

9. On a careful reading of the said judgment, I am of the opinion that the said finding cannot be said to have been based on no evidence. It is not found that some evidence was there and it has not been properly considered or appreciated by the trial court. The learned APP was not in a position to show me any peace of evidence, in order to argue that the said document is proved to have been forged by the present respondent. Therefore, there is no reason to disturb the said finding of fact, recorded by the trial court as it is not proved on record that the birth date certificate, Ex.13, was actually forged by the present respondent. Then, with respect to the production of the said document, Ex.13 before the authority is concerned, again it is not proved on record that the certificate, Ex.13 showing the birth date as 01/06/48 was actually produced by the present respondent before the said Commission. The I.O. has simply said that he collected the said document and placed the same along with the papers of chargesheet. The office from which the said certificate was allegedly procured is also not very much certain. It is not in

evidence on record that the said certificate was procured from a particular office by the said I.O. There is no further material to show that the said document, Ex.13 was procured or seized from a particular office.

10. Then there is no further material to show that the said document was produced or presented by the present respondent before the said authority. If the respondent had made an application before the said Commission, then he would have stated in his application that a particular set of documents was annexed to the said application. Therefore, the said application would have been an important piece of document to show and to prove that the so called forged certificate, Ex.13 was produced by the respondent before the said authority. No such evidence is shown to me from the record of the trial court.

11. So, on the one hand it is not proved on record that the document, Ex.13 was produced by the respondent before the said Commission. On the other hand, it is also not proved on record that the said document, Ex.13 was procured or seized or recovered from the said office by the I.O.. In other words, it cannot be said that the prosecution has proved that the said document was a forged document and it was used by the respondent knowing it to be a forged one.

12. When the aforesaid two offences are not proved on record, it cannot be said that the respondent was responsible for committing an offence of cheating the said Commission or the State.

13. In absence of any material on record of the trial court connecting the respondent with the said document, it has to be held that the trial court was justified in recording a judgment of acquittal in the aforesaid case. In that view of the matter, this being an acquittal appeal, it would be very difficult for this Court to disturb the said findings of fact since it is not shown to me that the said findings of fact have been recorded against the weight of evidence on record.

14. In that view of the matter, it has to be held that there is no merit in the present appeal and consequently, the said appeal deserves to be dismissed.

15. For the foregoing reasons, this appeal is ordered to be dismissed. The judgment and acquittal order recorded by the trial court are confirmed.

(D. P. Buch, J.)

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